

COMMENTARY ON INDUSTRY VERSUS TRIBAL CASINO REGULATIONS AND PRACTICES

The tools of regulation in the gaming industry, primarily background checks, fingerprinting, licensing, training, auditing and machine testing do not show significant variance between tribal and industry casinos. As the Belletier Report stated, state regulators have a high degree of commonality with respect to what they deem “good regulation”. There may be different precise techniques used, but the *intent* of these tools remains consistent. Additional variation between the regulation of, and the practices within, tribal and industry casino gaming do exist. Were the unit of analysis “the total universe” of regulation, then both spheres have relatively comparable regulations. Differences do occur in particular substantive areas, for example tribal regulation may be more significant in training and auditing, while industry casinos may keep more stringent internal daily financial records, but there are no broad generalizations which can be made that one sector is more heavily regulated than the other. It can be said, however, that there are differences in the *degree* to which regulations are enforced.

What can be said is that tribal gaming has more entities of government with whom they have a regulatory or enforcement relationship. This can actually include tribal, state and federal governments with simultaneous oversight functions. However, this does not mean that there are broad areas of regulation imposed upon tribal gaming that do not appear in some shape or form for industry casino outlets. Yet it is fair to say that the percentage of labor expended on regulatory efforts, due to multiple levels of regulation, is greater for the majority of tribal casino outlets.

Based on actual survey data from respondents, it is clear that tribal casinos have more regulatory activity, training and compliance type of activities. Additionally, there is a significant difference in the degree to which tribal gaming commissions appear to be mandating activities. It is not uncommon for training and monitoring requirements to exceed government imposed requirements. It is not clear, however, whether differences in tribal and industry casino gaming regulatory practices are attributable to industry’s longer presence in the gaming industry, such that the learning curve in industry is not as significant as it is for tribes, or whether the employee population pools for each have fundamentally different levels of education and professional training, which necessitates more extensive training efforts on the part of tribal casinos. This would imply that tribal gaming commissions might have slightly higher initial regulations, for example, about training until they have established a consistently professional and skilled labor force.

Training

Training is seen as an integral and *required* element of tribal gaming by a significant portion of tribal respondents. There is no single topic on which tribal casino employees receive training, but it is very casino specific including: “machine testing”; “New machines--courses for technicians on how to repair”; “surveillance and security”; “TIPS alcohol awareness training”; “pit, floor and dealer training”.

There are issues related to being a tribal government in which employees receive formal training. These include “leasing and compacting agreements”; “orientation for

Indian regulation”; and, “to learn compact”.

One of the more significant training differences between industry and tribal casino gaming is that the tribes regularly send their employees for *external* training.

Alternatively, if a tribe has a management company, it may be the management company that mandates the training. “Off site training for enforcement and investigation” is cited by one respondent while another indicates that the tribal government “sends regulators to Atlantic Coast College in Atlantic City at a cost of \$1100 per person and a typical attendance of 30 persons”. Many tribes send employees to “Gaming Laboratories International training for slots” or to “take public relations classes”.

It is also not unlikely for tribes to have a set amount of training time that is required. For example one respondent indicates that training “is a three week program” while another requires “a minimum of 30 hours of training for dealers”. Similarly, many respondents cited training in relation to Title 31 and indicated that regular training must then occur every six months.

Conversely, with industry gaming, training is generally seen as an issue of “good business practice” or something that is done “in-house and on the job”. About one third of industry respondents indicated that their state required training, however they reported no set schedule or number of hours of training required. Most of the training in industry casinos was described as “department specific” meaning training typically by a “pit, slot of cage manager”.

Industry differed in the degree to which training for large currency transactions were commonly cited as regular training. Again, however, this differed from tribal training in that it training may be an audit manager making notes about how an employee can improve their performance.

One of the more noticeable differences that came out in the data is the degree to which tribes rely on *outside* professional schools and training, whereas industry respondents reported that the vast majority of staff training occurred in house.

In sum, one of the interesting similarities in both tribal and industry casino training is the degree to which both are engaging in “customer service training” and “communications classes”, or bringing in consultants to certify that an outlet is a “Customer Focused Organization”. This indicates the increased awareness of the growing competition for customers in the gaming industry.

On-site inspections

In both sectors, there is clearly a governmental regulatory or enforcement jurisdiction to conduct inspections. Typically these inspections can be random and unannounced. There is a rather marked difference in the prevalence of inspections. In part attributable to the increased sophistication of the equipment used in inspecting, and partially due to the increased knowledge base of those doing the inspecting, over half of the regulators for tribal gaming reported conducting actual inspections on a daily basis. Conversely, regulators for industry gaming reported very vague answers to the question of the frequency of on-site inspections. Responses included: “We strive for as many as we can,”; “It depends on what is going on. Sometimes it is more than others”; “On site inspections have increased”; and, “They have increased with the a change in resource allocation for enforcement” Generally speaking, however, on-site inspections of state industry outlets, according to state regulatory respondents, tend to occur on something of

the order of a bi-annual basis.

On-site inspections of tribal and industry casinos are remarkably similar in one way. In both sets of survey respondents, the *presence* of a law enforcement or inspection person was deemed “on-site inspection”. There are unquestionably a small group of both industry and tribal outlets that are required to have 24-hour a day, 7 days a week state presence in their facilities. However, it was at the *regulator* level that it was emphasized that the *presence* of an officer may or may not mean regular *inspection*. There were instances where the quality and training of the investigators is thought to have increased markedly to where the skills are very sophisticated, but, so too, were there examples of inspectors who simply maintain a passive, reactive presence in their respective facilities.

Provision of Social Services

The majority of respondents for both tribal and industry casino gaming believed themselves to be under no requirements to provide social services. Where they differed is the degree to which it is “our policy to do so”. Here, there are only a couple of industry outlets who truly provide social services, both with respect to *significant funding* (as opposed to membership dues in a professional organization), and the actual provision of labor and involvement of employees. Tribal Gaming Commissions, in part possibly because of an awareness of IGRA, provide much more substantial and consistent services on a substantially more uniform basis.

The types of activities each undertakes is marked as well. Industry “social services” falls into what can more typically be described as philanthropy. Examples include painting of houses for immobile senior citizens, holiday dinners for seniors and gifting programs for children at Christmas. There were a couple of outlets who were *required* to make payments to a non-profit entity that was supporting provisions for hospitals, nursing facilities, cameras in police cars and fire trucks. This again speaks to Belletier Report’s discussion of the actual mandate or stated purpose contained in authorizing gambling in a state.

For tribes, social services tend to fall into subsistence or quality of life, and upward mobility categories. Examples of activities included seed money for businesses, health care insurance, college scholarships and job corps. Providing access to medical care or mental health coverage was also cited, as was actual cash subsidies to tribal members.

Where tribal and industry outlets have commonality is in their interpretations as to what is required with respect to common drinking or gambling. Many of the respondents believed they were required to provide or have literature on problem gambling available, as well as to post signs on problem gaming throughout the facility. “We have a number for a gambling hotline posted” or “We have a poster which reads, ‘If you bet with real dollars, bet with real sense’.” When pressed about the hotline, there were sharp differences as to whether an entity simply made a contribution to a professional organization that earmarked all memberships dues for funding of problem gambling programs, versus outlets which actually undertook the responsibility for funding and staffing hotlines. Similarly, while both tribal and industry respondents discuss the training of employees to recognize problem drinking or gambling, there was a difference between access to this training and actual enforcement or implementation of it in practice. For example, there were respondents who could detail a very specific and professional

intervention policy when confronting a patron with an apparent problem, both with respect to communication and confrontation techniques, to security procedures, or “to cutting the patron off”. Other respondents indicated “on-the-job” training for alcohol awareness or spotting problem gambling.

Audits

Both tribal and industry casino outlets are subject to audits if deemed necessary. In industry, the prevailing goal of state regulators is most commonly to conduct a formal audit every fourth year. Internal audits, those based on the policy of the management company are likely to occur on a monthly basis. Tribal outlets must submit a compliance report to the NIGC on an annual basis. About one-third of tribal casinos are the subject of an annual audit, with the second third likely to have audits on a semi-annual basis. From the state regulatory perspective, there remain questions as to the *quality* of audits of tribal casinos that can be done, due to a lack of access to certain records that are deemed essential.

Costs of Regulation